

Disrespect, Incivility Can be 'Gateway' to Sexual Harassment



By [Dana Wilkie](#) June 18, 2018

CHICAGO—An inappropriate comment about a woman's dress or a leering look may not rise to the level of illegal sexual harassment, but it's that type of behavior that can provide the "fertile soil" where future unlawful conduct may take root, according to an employment law attorney who gave a concurrent session Tuesday at the [SHRM 2018 Annual Conference & Exposition](#).

"Lack of civility creates fertile soil for sexually harassing conduct," said Jonathan A. Segal, a partner with Duane Morris, LLP, in Philadelphia and New York City. "A poor joke of an offensive nature, an inappropriate leer or gawk, sexually suggestive comments or conversations—any one in and of itself is probably not unlawful. But ... you want to look at the culture. You want to ask, 'Is it respectful? Would this be something we would feel comfortable with if it were on the front page of the Chicago Tribune? Is this something that ... if someone in our family read about it, ... they would be embarrassed by it?'"

Don't Make Anti-Harassment Policies Just About Liability

Segal said he sees organizations make a common mistake when outlining their anti-harassment policies.

They tend to write policies that begin with statements such as "Sexual harassment is ..." and then provide strictly legal definitions that could be punishable or actionable under the law.

Such statements, he said, suggest that "what we're talking about is only a matter of legal compliance and not cultural civility."

"What employees hear is, 'It's not about my humanity. It's not about my dignity. It's only a matter of cost And if it's only a matter of cost, at what cost will you accept [someone] doing something wrong?' "

Instead, he suggested, it's better that the policy also prohibit certain behaviors, even if they aren't themselves unlawful.

Things You Just Don't Say

Teaching employees, managers and C-suite leaders how to address incivility and disrespect—even if it doesn't rise to the level of unlawful conduct—can go a long way toward preventing unlawful sexual harassment and even lawsuits, he said.

For instance, he said, say employee "Susan" tells her manager that colleague "Greg" grabbed her breasts. It's never a good idea to say something like "That doesn't sound like Greg," because "you've just diminished what Susan said," Segal pointed out. And it's not a good idea to say, "That sounds like Greg," because "that sounds like you've known about it all along and done nothing about it."

Another example: Supervisor "Brad" repeatedly tells employee "Brenda" that he likes the way she's dressed, and she doesn't like it. The appropriate thing for Brenda to tell Brad, he said, is "When you comment on my appearance, it makes me uncomfortable. Please stop."

Not appropriate, he noted, is the response Segal got when he confronted one executive about repeatedly commenting on a subordinate's appearance despite her asking him not to.

"When asked why he continued, his words were, 'I thought she was being hypersensitive,' " Segal recalled. "So I said, 'You know, if you think someone's being hypersensitive, isn't it hyperstupid to do it again?'"

"The most common response of an offender is, 'I'm sorry, I didn't mean to offend you.' That can be problematic, too. It puts the burden on the other person: 'I didn't do anything wrong; I'm just sorry your sensitivities are so great that you feel offended.'"

"Somewhere in the middle is, 'Thank you for telling me. I won't do it again.' "

Wendy MacKenzie, an HR associate director working in education in Lakeville, Conn., attended Segal's session, she said, because "it's been important for us to be aware of our screening practices and subsequent training for employees."

"We have a higher standard of care because we are in contact with students," she said. "So we do healthy boundary training with staff and faculty. You want it to do more than something that's just checking off the box."

In his employment law practice, Glen Kraemer has investigated several CEOs and other C-suite leaders concerning sexual harassment. He agreed that insisting on civility and respect can go a long way toward preventing sexual harassment complaints or lawsuits.

"A critical goal for all organizations is to establish a culture where employees feel empowered and secure in seeking solace and satisfaction internally, rather than externally, for their grievances," said Kraemer, a partner with Hirschfeld Kraemer in Santa Monica, Calif. "Ideally, this would be accomplished through effective investigations conducted by trained internal HR leadership, as that is the most direct way to create a sustained environment of trust within an organization."

[SHRM members-only toolkit: [Introduction to the Human Resources Discipline of Ethics and Corporate Social Responsibility and Sustainability](#)]

SHRM Position on Sexual Harassment Policies

SHRM is working with the National Conference of State Legislatures to provide training to lawmakers and staff on workplace harassment and resolution. SHRM President and CEO, Johnny C. Taylor, Jr., SHRM-SCP, also testified before the California Legislature on reforming harassment policies and the importance of healthy workplace culture.

"SHRM ... believes that any misconduct against an employee should be resolved promptly," according to a SHRM policy statement. "SHRM supports a discrimination- and harassment-free workplace. SHRM believes employers should have effective anti-harassment policies that enable thorough investigations of harassment complaints and hold perpetrators accountable. In addition, employers should work toward creating a workplace culture that does not tolerate discrimination or harassment."